Supreme Court, U.S.
FILED

951411 MAR 4 1996

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

SHARON G. WALSH,

Petitioner,

vs.

VLADIMIR IVKOVICH,

Respondent.

Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

STANLEY H. JAKALA
Counsel of Record
3219 South Maple Avenue
Berwyn, Illinois 60402-2810
(708) 788-5733
Attorney for Petitioner

Midwest Law Printing Co., Chicago 60610, (312) 321-0220

QUESTION PRESENTED

In the absence of an emergency or police necessity, did the petitioner state a cause of action for declaratory judgment based upon a liberty interest under the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution to challenge a police chief's order requiring her to attend a police school thereby depriving her of attending to the needs of her children?

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
I.	
THE APPELLATE COURT DECISION, IN THIS INSTANCE, IS CONTRARY TO LAW BY STATING THAT THE PETITIONER FAILED TO STATE A CAUSE OF ACTION FOR DECLARATORY JUDGMENT	7
II.	
THE APPELLATE COURT DECISION, IN THIS INSTANCE, IS CONTRARY TO LAW BY HOLDING THAT THE PETITIONER DID NOT STATE A CAUSE OF ACTION FOR A VIOLATION OF HER LIBERTY INTEREST UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION	9

III.

THE APPELLATE COURT DECISION, IN THIS INSTANCE, IS CONTRARY TO LAW IN THAT THE PETITIONER DID STATE A CAUSE OF ACTION FOR A COMPLAINT FOR DECLARATORY JUDGMENT WHEN THE PETITIONER ALLEGED THAT SHE CAN CHALLENGE THE CHIEF'S ORDER ADVERSELY AFFECTING SUCH AN INTEREST AS BEING ARBITRARY, CAPRICIOUS, AND UNREASONABLE 11

CONCLUSION 16

INDEX TO APPENDIX

PAGE

A—Opinion of the Appellate Court of Illinois, First District, September 14, 1995 ..... A1

B—Order of the Circuit Court of Cook County, Illinois, October 14, 1993 ..... B1

C—Order of the Supreme Court of Illinois Denying Petition for Leave to Appeal, December 6, 1995 ..... C1

TABLE OF AUTHORITIES

Cases	PAGE
Bigby v. City of Chicago, 766 F.2d 1053 (1985) ..	10
Buege v. Lee, 56 Ill.App.3d 793 (1978)	8
Castaneda v. Illinois Human Rights Commission, 132 Ill.2d 304 (1989)	7, 8
City of Chicago v. Department of Human Rights, 141 Ill.App.3d 165 (1st Dist. 2d Div. 1986) ...	8
In re. Polovchak, 104 Ill.App.3d 203 (1st Dist. 4th Div. 1982)	11
In re. Roger B., 84 Ill.2d 323 (1981)	10
Launius v. Board of Fire and Police Commissioners, 211 Ill.App.3d 545 (1991)	9, 13
Launius v. Board of Fire and Police Commissioners of City of Des Plaines, 151 Ill.2d 419 (1992)	13, 14
Matthews v. Eldridge, 424 U.S. 319 (1976)	15
Polovchak v. Meese, 774 F.2d 731 (U.S.C.A. 7th Cir. 1985)	11, 14, 15
Thorne v. City of El Segundo, 807 F.2d 1131 (9th Cir. 1986)	9

Other Authorities	
Amendment V	3
Amendment XIV	4
Illinois Revised Statutes, Juvenile Court, Chapter 37, ¶801-5	11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

SHARON G. WALSH,

Petitioner,

VS.

VLADIMIR IVKOVICH,

Respondent.

Petition for Writ of Certiorari to the Appellate Court of Illinois, First District

PETITION FOR WRIT OF CERTIORARI

The petitioner respectfully requests this Court to issue a writ of certiorari to the Illinois Appellate Court, First District, to review that court's decision and opinion entered on December 14, 1995 (App. A).

OPINIONS BELOW

On October 14, 1993, the Circuit Court of Cook County, Illinois, granted respondent's motion to dismiss the petitioner's complaint for declaratory judgment for failure to

state a cause of action on the basis that the petitioner did not have a liberty interest under the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution to disobey a police chief's order to attend a police school, although her minor children required her motherly care.

The decision of the Circuit Court was rendered even though there was no existing emergency or police need to attend such a school (App. B).

Subsequently thereafter, the Illinois Appellate Court, First District, in an unpublished opinion, entitled *Sharon G. Walsh,* Plaintiff-Appellant, *v. Vladimir Ivkovich,* Defendant-Appellee, affirmed the Circuit Court opinion on the grounds that the petitioner did not have a liberty interest protection under the Fifth and Fourteenth Amendments to the United States Constitution to disobey a police chief's order requiring her to attend the police school thereby depriving her of attending to the needs of her children, irrespective of the absence of an emergency or police necessity to attend such a school.

Thereafter, the petitioner filed a petition for leave to appeal with the Illinois Supreme Court, which petition was denied on December 6, 1995 (App. C).

JURISDICTION

1. The decision of the Supreme Court of Illinois, denying the petition for leave to appeal, was entered on December 6, 1995.

2. The federal question of the petitioner's claim is that she had a liberty interest protection under the Fifth and Fourteenth Amendments to the United States Constitu-

tion to disobey a police chief's order requiring her to attend a police school, since there was no existing emergency or police necessity to attend such a school, thereby depriving her of attending the needs of her children; the federal claim was raised in the complaint filed with the Circuit Court of Cook County, Illinois, briefed and argued before the Circuit Court of Cook County, Illinois, and raised on appeal with the Illinois Appellate Court, First District, and addressed in the Petition for Leave to Appeal by the petitioner filed with the Illinois Supreme Court.

3. The petition for writ of certiorari was filed less than ninety (90) days from the denial of the petition for leave to appeal on December 6, 1995.

4. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Sharon G. Walsh has been employed as a patrol officer for the Village of Bridgeview, Illinois, since December 20, 1982 (C2).

During her tenure as a Village of Bridgeview, Illinois, police officer, petitioner has received evaluations stating that she is effective and meets expectations (C2).

On petitioner's most recent performance evaluation, dated July 10, 1992, covering a period from January through June, 1992, the comments of Sgt. Charles Chigas are: "This is R/Sgt. first evaluation of Ofc. Walsh. Ofc. Walsh is a thorough fact finding veteran officer. She completes her given assignments well. R/Sgt. has spoke (sic) with her about increasing her overall citation production. Otherwise, Ofc. Walsh is a confident street smart officer. Ofc. Walsh has consistant (sic) good judgement and above average decision making ability." (C2)

Relative to Sgt. Chigas' comments about the petitioner's performance, an additional commentary is stated regarding her qualifications as a telecommunications officer. On the aforesaid performance evaluation it is noted

by her commanding officer: "I have reviewed Sgt. Chigas evaluation of Officer Walsh, and I concur with his comments. Off. Walsh has brought a plus to the Department with her expertise as a qualified Telecommunications Officer." (C3)

During petitioner's tenure as a police officer for the Village of Bridgeview, Illinois, her relationship with the respondent, Police Chief Vladimir Ivkovich, was excellent, until on or about March 22, 1988. (C3)

On March 22, 1988, the petitioner gave birth to a daughter, Erin, and subsequently gave birth to two other children: a daughter, Michelle, on January 6, 1990, and a son, Michael, on December 5, 1991. (C3)

During these pregnancies, the respondent, Police Chief Vladimir Ivkovich, exhibited hostility, and particularly on February 11, 1991, advised the petitioner that she should stay at home and raise the children as the Chief's wife had done. (C3)

Prior to the third birth, the Chief was reluctant initially to accommodate the petitioner by removing her from the street, and assigning her to less hazardous duty, as required by her third pregnancy, pursuant to Dr. Johnson Dy's written documentation. (C3)

After the birth of the third child, Michael, and the Chief being fully aware that Michael was being breastfed, the Chief determined to order the petitioner to attend a police academy in Springfield, Illinois, for approximately eleven weeks. (C4)

It is the petitioner's understanding that the Chief's order requiring her to attend the police academy in Springfield, Illinois, will enable her to be a counselor for new recruits. (C4)

The petitioner's job description as a patrol officer for the Village of Bridgeview, Illinois, Police Department does not include counseling of new recruits, pursuant to her job description. (C4)

The custom and practice of the Village of Bridgeview, Illinois, Police Department provides that no police officer who has more than three years working experience shall be made a field training officer, and that such a counseling school would only be beneficial to field training officers. (C4)

The petitioner is neither eligible nor required to attend counseling school, pursuant to the custom and practice of the Village of Bridgeview, Illinois, Police Department, as alleged in paragraph 12 of the Complaint, since she has more than three years working experience in the department. (C4)

The custom and practice of the Village of Bridgeview, Illinois, Police Department does not require any schooling for advancements or promotions to higher ranks, such as sergeant or detective. (C4)

On information and belief, the petitioner has been informed that the Chief intends to order the petitioner to counseling school located in Springfield, Illinois. (C5)

Such an order is motivated by and intended for the purpose of separating the petitioner from her children for an extended length of time, in violation of her liberty right under the Fifth and Fourteenth Amendments of the United States Constitution to attend to the needs of her family. (C6)

REASONS FOR GRANTING THE WRIT

I.

THE APPELLATE COURT DECISION, IN THIS INSTANCE, IS CONTRARY TO LAW BY STATING THAT THE PETITIONER FAILED TO STATE A CAUSE OF ACTION FOR DECLARATORY JUDGMENT.

On page 4 of the unpublished opinion of the Appellate court, the Appellate Court ruled that the petitioner had failed to state a cause of action for declaratory judgment because the complaint for declaratory judgment does not allege an actual controversy between the parties.

The basis for the Appellate Court ruling is that there is no allegation that an order actually existed that was written or oral, the date of issuance of such an order, with the result that the petitioner's complaint was speculative.

In this matter, the petitioner's cause of action was concerned about what would happen at some future date on the basis of what in fact had happened as alleged in her complaint; namely, the petitioner had alleged that the chief advised her to stay at home and take care of her children, implying that she should not be a police officer; that the chief required her to work in a hazardous position during her third pregnancy, indicating that the chief had no concerns about the needs of her children; and that the chief did order her to a Springfield police academy during a breastfeeding period of her child, evidencing that the chief did not care about the needs of the petitioner's children.

In conjunction with the arguments heretofore advanced by the petitioner that she had stated a cause for declaratory judgment, the petitioner refers this Court to *Casta-*

neda v. Illinois Human Rights Commission, 132 Ill.2d 304 (1989), at 308-309, wherein the court recognizes that exceptions exist to the doctrine of the exhaustion of administrative remedies; namely, that an exhaustion of remedies is not required where "a statute, ordinance, or rule is attacked as unconstitutional on its face."

With reference to the *Castaneda* court decision, in *Buege v. Lee*, 56 Ill.App.3d 793 (1978), at 796-797, the court holds that interdepartmental orders of a police chief are not insulated from judicial review if there are questions of good faith and reasonable exercise of discretion involved.

Relative to that court's position, at page 798, the court states that a police officer can challenge a chief's order via a complaint for declaratory judgment by first challenging it without provoking a disciplinary proceeding against him by challenging such an order before an administrative body.

Supporting *Buege v. Lee, City of Chicago v. Department of Human Rights*, 141 Ill.App.3d 165 (1st Dist. 2d Div. 1986), recognizes that a complaint for declaratory judgment can be filed to prevent future harm, pages 169-170; and at 172, the court asserts that:

> A plaintiff is not required to "provoke a disciplinary proceeding against him so as to provide a form to challenge the *** order."

Based upon the analysis of the petitioner's cited decisions, the purpose of the declaratory judgment herein is to challenge the constitutionality of the order, prior to its effectuation, to prevent the petitioner's being disciplined by the respondent for disobedience of an order, which would result in a dismissal for cause as is so clearly re-

flected in *Launius v. Board of Fire and Police Commissioners of City of Des Plaines*, 151 Ill.2d 419 (1992).

Pursuant to the petitioner's arguments, there is no question that the Circuit Court ruled correctly that the petitioner had stated a cause of action for declaratory judgment contrary to the Appellate Court decision on that legal point.

II.

THE APPELLATE COURT DECISION, IN THIS INSTANCE, IS CONTRARY TO LAW BY HOLDING THAT THE PETITIONER DID NOT STATE A CAUSE OF ACTION FOR A VIOLATION OF HER LIBERTY INTEREST UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

It is the position of the petitioner that there is sufficient case law to support the petitioner's contention that there is a constitutional liberty interest involving family relationships, rights of family privacy, and freedom to marry and reproduce, as is illustrated in *Thorne v. City of El Segundo*, 807 F.2d 1131 (9th Cir. 1986), at 1138:

> At the time of Thorne's application, it was clearly established that the Constitution guaranteed the right to make certain fundamental intimate choices without state interference, see *Loving v. Virginia*, 388 U.S. 1, 12, 87 S.Ct. 1817, 1823, 18 L.Ed.2d 1010 (1967) (freedom to marry or not marry); *Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942) (sterilization of habitual criminals violates equal protection and deprives an individual of a basic liberty, procreation); *Griswold v. Connecticut*, 381 U.S. 479, 484-86, 85 S.Ct. 1678, 1681-82, 14 L.Ed.2d 510 (1965) (Constitution guarantees right of privacy and protects rights of married couples to use contraception); *Eisenstadt v. Baird*, 405 U.S. 438,

> 453-55, 92 S.Ct. 1029, 1038-39, 31 L.Ed.2d 349 (1972) (extending right of privacy to protect use of contraceptives by unmarried persons); *Roe v. Wade*, 410 U.S. 113, 153, 93 S.Ct. 705, 726, 35 L.Ed.2d 147 (1973) (right of privacy protects a woman's decision regarding termination of pregnancy), and to avoid disclosure of personal matters, see *Whalen v. Roe*, 429 U.S. 589, 599-600, 97 S.Ct. 869, 876, 51 L.Ed.2d 64 (1977).

From the above language, it is quite apparent that the case law is very specific that, if there are constitutional guarantees relating to marriage, sterilization, procreation, and abortion, then there must be a constitutional guarantee taking care of the needs of the children, and that such constitutional guarantees are postured upon the concept of substantive due process, as noted in *Bigby v. City of Chicago*, 766 F.2d 1053 (1985), at 1058:

> . . . "substantive due process" continues to be a recognized concept of constitutional law. The best known modern instance is the right to an abortion, see *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), a right that rests on the due process clause of the Fourteenth Amendment but that has nothing to do with notice and hearing; but there are other examples within the general area of family and sex. See, e.g., *Moore v. City of East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977).

That there is a recognized substantive due process of a liberty interest involving child rearing is recognized in *In re. Roger B.*, 84 Ill.2d 323 (1981), at 327.

In conjunction with *In re. Roger B.*, in *In re. Polovchak*, 104 Ill.App.3d 203 (1st Dist. 4th Div. 1982), at 209, the Illinois Supreme Court holds: "It is well settled in this country that parents have the primary role of providing for the care and nurture of their children."

Since parents have a primary role of providing for the care and nurture of their children, such a right is considered of paramount importance, pursuant to *Polovchak v. Meese*, 774 F.2d 731 (1985), at 736, when the Seventh Circuit Appellate Court stated:

> It would also, absent a showing of great government necessity, appear to call for a hearing *before* the deprivation of parental rights, given the divisive impact of either government action on the family.

As a result, state laws have recognized principles enunciated in *In re. Roger B.*, *In re. Polovchak*, and *Polovchak v. Meese*, when enacting legislative statutes regarding the nurturing of children; for example, under Illinois Revised Statutes, Juvenile Court, Chapter 37, ¶801-5, rights of parties to proceedings, the state of Illinois recognizes that the nurturing of children is a parent's primary responsibility and that state intervention for depriving the parent of such responsibility requires the state to provide the parent with notice and a hearing before the parent can lose his parental right to rear his children.

III.

THE APPELLATE COURT DECISION, IN THIS INSTANCE, IS CONTRARY TO LAW IN THAT THE PETITIONER DID STATE A CAUSE OF ACTION FOR A COMPLAINT FOR DECLARATORY JUDGMENT WHEN THE PETITIONER ALLEGED THAT SHE CAN CHALLENGE THE CHIEF'S ORDER ADVERSELY AFFECTING SUCH AN INTEREST AS BEING ARBITRARY, CAPRICIOUS, AND UNREASONABLE.

On page 5 of the Appellate Court opinion, the Appellate Court ruled that it concurred with the analysis of the trial court in dismissing the petitioner's complaint.

The analysis to which the Appellate Court referred was the Circuit Court's order of October 14, 1993.

On October 14, 1993, the court entered an order granting the respondent's motion to dismiss the petitioner's declaratory judgment on the basis that the petitioner did not have a liberty interest under the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution to challenge the police chief's order requiring her to attend a police school irrespective of the petitioner's need to take care of her children. (C174)

In granting the respondent's motion, in the transcript of proceedings on October 14, 1993, page 21, although the court recognized the petitioner's claim as being novel, nevertheless, the court ruled that the petitioner's contention that she had a liberty interest to take care of the needs of her family which could challenge a police order requiring her to attend training classes 200 miles from her home as unconstitutional was without merit.

In conjunction with the court's observation, the court states as follows on pages 21 and 22 of the transcript of proceedings of October 14, 1993:

> It's my view that the Plaintiff's contention is totally without merit. There's simple (sic) no Constitutionally recognized liberty interest in the mother's right to care for the needs of the family under these circumstances but even if there was such a broad and sweeping right bestowed upon mother, generally, it's Plaintiff's status as a police officer which allegedly threatens her enjoyment of that right.
>
> If there was such a liberty interest, Plaintiff needs only resign from her job as a police officer to enjoy that interest fully.

Further, on page 25 of the transcript of proceedings of October 14, 1993, the court observed:

> It's not difficult to declare that the plaintiff has no claim. It's not difficult to declare that the Plaintiff's alleged liberty interest does not exist and she has no right to declare that additional training in a far away location or to decline additional training in a far away location because of its potential disruptive impact on her home life.

A careful review reveals that Judge Curry's remarks reflect the Illinois Supreme Court position of *Launius v. Board of Fire and Police Commissioners*, 151 Ill.2d 419 (1992), at 444, when the Court states:

> A police officer does not have the option to perform his duties when he wishes. Plaintiff admitted that as a police officer, it was his primary and sworn duty to protect the lives and property of the citizens of Des Plaines. The board found, *inter alia*, that plaintiff abandoned his post, that he "refused to perform his duties as a police officer" that he "demonstrated a substantial shortcoming which render[ed] continuance in employment in some way detrimental to the discipline and efficiency of the Police Department"; and consequently, the board ordered that plaintiff be discharged from his position as a police officer. This decision was neither unrelated to the needs of the service nor arbitrary and unreasonable.

However, there is a significant factual difference between *Walsh* and *Launius*, with the result that Judge Curry's observations are not buttressed by the Illinois Supreme Court decisions, which reversed the Illinois Appellate Court in *Launius v. Board of Fire and Police Commissioners*, 211 Ill.App.3d 545 (1991), in that, in *Launius*, the Illinois Supreme Court dealt with an emergency situation that justified its reversal of the Appellate

Court and affirming of the Board of Fire and Police Commissioners decision in dismissing Launius, when the Illinois Supreme Court states, at 439:

> Whereas in plaintiff's case, the board found: that he "abandoned" his post after "having been denied permission to leave" and did not remain "on duty until he was properly relieved by another member of the Police Department"; that he left the station and "was out of contact with the Police Department for approximately 12 hours"; that during the period of plaintiff's absence, "officers were needed to handle a major disaster in the City of Des Plaines"; and that plaintiff "left his assigned post and the Des Plaines Police Station at about 10:00 A.M., three hours after his duty shift began [and he] did not return to duty."

Therefore, unlike Launius, the petitioner herein has not abandoned her post in disobedience of an order, nor has she failed to return to her duties because of a contemplated order that is not police need-related, such as an emergency. In contrast, petitioner has remained at her post, and is challenging the constitutionality of the contemplated order that is not motivated by police needs, such as an emergency, but is motivated to subordinate her fundamental right as a parent to take care of the needs of her children.

Because no emergency exists in regard to requiring the petitioner to attend a counseling school 200 miles away from her home, thereby separating her from her children for an extended period of eleven weeks, as previously noted in *Polovchak v. Meese*, 774 F.2d 731 (U.S.C.A. 7th Cir. 1985), at 736, absent a showing of great government necessity there cannot be a deprivation of parental rights without a due process hearing.

Consequently, by balancing the petitioner's interest of taking care of the needs of her children against the interest of the chief's order in requiring her to attend a counseling school not postured upon police need, such as an emergency, criteria of the balancing test must be considered, as analyzed in *Matthews v. Eldridge*, 424 U.S. 319 (1976), upon which *Polovchak v. Meese* relied. As stated in *Polovchak*, at 735, the balancing test considers these three factors: (1) the private interest affected by the proceedings and (2) the risk of error inherent in the government's chosen procedure against (3) the interest of the government in using its own procedure.

Applying those three tests, in *Polovchak v. Meese*, the *Polovchak* court recognizes that interest in taking care of the needs of one's children is one of the strongest society knows.

Based upon the petitioner's interest in taking care of the needs of her children as the strongest that society knows, the risk of error in denying the petitioner the opportunity to take care of the needs of her children via the chief's intended order is great, since the petitioner knows her children, knows their motivations and interests better than any other party.

In contrast, the interest of the chief in not effectuating the contemplated order would be burdened only slightly because the order is not founded upon police needs, such as emergency, but is postured upon a motivated intent to deprive the petitioner of her liberty right to take care of the needs of her children.

Consequently, the chief's order requiring the petitioner to attend a counseling school in Springfield, Illinois, for a period of approximately eleven weeks, was an arbi-

trary, capricious, and unreasonable order, since it violated the petitioner's substantive due process liberty interest under the Fifth and Fourteenth Amendments to the United States Constitution.

CONCLUSION

For the above stated reasons, this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

STANLEY H. JAKALA
Counsel of Record
3219 South Maple Avenue
Berwyn, Illinois 60402-2810
(708) 788-5733
Attorney for Petitioner

APPENDICES

APPENDIX A

No. 1-93-3808

Opinion of the Appellate Court of Illinois, First District

Fourth Division—September 14, 1995

SHARON G. WALSH, Plaintiff-Appellant,

v.

VLADIMIR IVKOVICH, Defendant-Appellee.

JUSTICE O'BRIEN delivered the opinion of the court:

Plaintiff, Sharon Walsh, appeals from an order of the circuit court granting the defendant's motion to dismiss pursuant to 735 ILCS 5/2-615 (West 1992) and dismissing plaintiff's complaint for declaratory judgment. We affirm.

On December 12, 1992, plaintiff filed her complaint for declaratory judgment which included the following allegations, among others:

> "9. After the birth of the third child, Michael, and the Chief being fully aware that Michael was being breast fed, the Chief *determined to order the plaintiff* to attend a police academy in Springfield, Illinois for approximately eleven weeks. (Emphasis added.)
>
> 10. It is the *plaintiff's understanding* that the Chief's order requiring her to attend the police academy in Springfield, Illinois, will enable her to be a counselor for new recruits. (Emphasis added.)
>
> 16. Such an order is motivated by and intended for the purpose of separating the plaintiff from her family for an extended period of time, in violation of her liberty rights under the Fifth and Fourteenth Amend-

ments of the United States Constitution to attend to the needs of her family.

Wherefore, the plaintiff prays:

A. That a Chief's order requiring her to attend counseling school for a period of eleven weeks be judged arbitrary, capricious and unreasonable in that it would violate the plaintiff's liberty interests under the Fifth and Fourteenth Amendments due process clause, by denying the plaintiff's liberties to meet and take care of the needs of her children and family. . ."

Defendant filed a motion to dismiss pursuant to 735 ILCS 5/2-615 alleging that the cause was not justiciable as it was a premature cause of action and that the plaintiff did not have a liberty interest under the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution, as plead.

On October 14, 1993, the court granted defendant's motion to dismiss plaintiff's complaint for declaratory judgment and this appeal followed.

A motion to dismiss pursuant to 735 ILCS 5/2-615 admits all well plead facts as true and any reasonable inferences which can be drawn from the facts. (*S.B.L. Associates v. Village of Elk Grove* (1993), 247 Ill.App.3d 25, 29, 617 N.E.2d 178.) When reviewing a dismissal of a complaint based on a 735 ILCS 5/2-615 motion to dismiss, a reviewing court must determine whether the complaint's allegations, viewed in the light most favorable to the plaintiff, set forth a cause of action for which relief can be granted. (*S.B.L. Associates v. Village of Elk Grove*, 247 Ill.App.3d at 29.) Conclusions of law or conclusions of fact which are unsupported by specific factual allegations are not admitted. (*S.B.L. Associates v. Village*

of Elk Grove, 247 Ill.App.3d at 29; *Greenberg v. United Airlines* (1990), 206 Ill.App.3d 40, 44, 563 N.E.2d 1031.) For purposes of our review, we accept all well plead facts of plaintiff's complaint as true and view the complaint in the light most favorable to the plaintiff to determine whether it states a cause of action.

There are two general requirements to bring a declaratory judgment action: 1) there must an actual controversy, and 2) the party bringing the cause of action must be interested in the controversy (735 ILCS 5/2-701(a) (West 1992).) An actual controversy does not mean that a wrong must have been committed and injury inflicted. It does however, require a showing that the underlying facts and issues of the case are not moot or *premature* requiring the court to pass judgment on mere abstract propositions of law, or render an advisory opinion, or give legal advice as to future events. (Emphasis added.) *Underground Contractors Association v. City of Chicago* (1977), 66 Ill.2d 371, 375, 362 N.E.2d 298.) Additionally, an actual controversy has been interpreted as a concrete dispute the resolution of which will aid in the termination of an immediate and definite controversy. *S.B.L. Associates v. Village of Elk Grove*, 247 Ill.App.3d at 29; *Underground Contractors Association v. City of Chicago*, 66 Ill.2d at 375.) If a plaintiff's rights would be infringed and thereby adversely affected only by some future possibility, then the right in question is speculative, there is no actual controversy and the court cannot entertain a declaratory judgment. *S.B.L. Associates v. Village of Elk Grove*, 247 Ill.App.3d at 29; *Township High School District 203 v. Village of Northfield* (1989), 184 Ill.App.3d 367, 373, 540 N.E.2d 365.

The plaintiff's complaint alleges "the Chief determined to order the plaintiff" and "it is the plaintiff's understanding the Chief's order requiring her to attend the police academy . . .". The language of the plaintiff's allegations which we accept as true for purposes of the motion to dismiss is in the future tense. There is no allegation that an order exists, whether it is written or oral, the date of its issuance, its specifications or any other facts surrounding its existence. And while it is understood that the purpose of a declaratory judgment action is to allow the court to address a controversy one step earlier than normal after a dispute has arisen, and before steps are taken which would give rise to a claim for damage or other relief (*Eyman v. McDonough District Hospital* (1993), 245 Ill.App.3d 394, 396, 613 N.E.2d 819) it is axiomatic that the court must have some facts that an actual controversy has arisen, and that some point in time, the rights of the parties have come into conflict. The court cannot render judgment upon "intentions to order", "plaintiff's understanding" of another party's actions, or some event to occur in the future as alleged by plaintiff. Therefore, plaintiff's complaint fails to state a cause of action for declaratory judgment because it does not allege an actual controversy between the parties.

Since a reviewing court can affirm a lower court's decision on any grounds which are based upon the record, regardless of whether these grounds were relied upon by the court or whether the court's reasoning was correct (*S.B.L. Associates v. Village of Elk Grove* (1993), 247 Ill. App.3d at 30) we affirm the circuit court's dismissal of the declaratory judgment action because no actual controversy exists.

Additionally, we consider plaintiff allegation that her liberty interests may be impinged by the alleged actions of the Chief. Plaintiff cites no persuasive authority supporting her allegation that attending a training session pursuant to her employment impinges upon her liberty interests pursuant to the Fifth and Fourteenth Amendments of the United States Constitution. We concur with the analysis of the trial court in dismissing plaintiff's complaint.

Accordingly, we affirm the order of the circuit court dismissing the plaintiff's complaint for declaratory judgment.

Affirmed.

S.M. O'BRIEN, J. with HOFFMAN, P.J. and THEIS, J. concurring.

APPENDIX B

[Filed October 14, 1993]

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

No. 92 CH 12174

SHARON WALSH,

Plaintiff,

v.

VLADIMIR IVKOVICH,

Defendant.

ORDER

This cause coming to be heard on defendant's §2-615 Motion to Dismiss plaintiff's complaint for Declaratory Judgment, counsel present, the court hearing argument and having reviewed all the pleadings filed herein and being otherwise fully advised,

It is hereby ordered, consistent with the findings read into the record by the court, that defendant's Motion to Dismiss is granted and that plaintiff's Complaint for Declaratory Judgment is hereby dismissed with prejudice.

DATE: 10/14/93

ENTER: /s/ R. CURRY
Judge

APPENDIX C

(Letterhead of)

ILLINOIS SUPREME COURT
79978 JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

December 6, 1995

Mr. Stanley H. Jakala
Attorney at Law
3219 S. Maple Ave.
Berwyn, IL 60402

No. 79978 – Sharon G. Walsh, petitioner, v. Vladimir Ivkovich, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 28, 1995.